CHAN CHIN MIN & ANOR.

v.

LIM YOK ENG (LAWFUL MOTHER OF GAN SWEE HOCK, DECEASED)

SUPREME COURT, KUALA LUMPUR
DATO' PEH SWEE CHIN SCJ,
TAN SRI DATUK EDGAR JOSEPH JR SCJ,
DATO' MOHAMED DZAIDDIN BIN HJ ABDULLAH SCJ
[CIVIL APPEAL NO 02-307-93]
12 AUGUST 1994

TORT: Dependency claim - Loss of support - Quantum - Whether dependant only entitled to such loss as sustained by her personally - Dependant using only one half of sum received from deceased son for her sustenance - Whether quantum of loss of support thereof to be sliced by half - Section 7(3) Civil Law Act 1956.

TORT: Dependency claim - Class of dependants - Section 7(2) Civil Law Act 1956 - Whether could be widened to include brother and sister of the deceased - Dependant saddled with duty under the Guardianship of Infants Act 1961 to support three minor children - Whether a ground to expand the class of dependants - Claim for loss of support inclusive of sum spent on children - Whether maintainable - Whether claim too remote to be foreseeable.

TORT: Dependency claim - Deceased 25 years of age at time of death - Multiplier - Multiplicand - Statutory formula of 16 years of purchase - Section 7(3)(iv)(d) - Whether mandatory - Whether subject to revision by Court.

WORDS AND PHRASES: "Support" - "Any loss of support suffered" - Section. 7(3)(iv)(d) Civil law Act 1956.

The respondent, a widow and housewife, had lost her 25-year-old son, upon whom she was dependant for support, in a road accident in 1991. Prior to the son's death the respondent had been receiving from the son some RM 750 per month and out of this sum she spent about half for her personal sustenance and the other half for the expenses of her three minor children, the sibling of the deceased. The respondent instituted a dependency claim against the appellants for loss of future support under s. 7(3) Civil Law Act 1956, and in the ensuing judgment, the High Court awarded the respondent RM 144,000, being loss of support computed on the basis of loss of RM 750 per month spanning throughout the statutory 16 years of purchase.

The appellants appealed against this part of the judgment and argued before this Court that the said quantum was wrongly computed as the learned Judge, in taking RM 750 per month as the basic figure for assessing the loss of support, had failed to consider that the actual loss of support suffered by the respondent was only half that figure and secondly, that in fixing the multiplier at 16 years of purchase, the learned Judge had not considered the possibility of subsequent marriage of the deceased had he not died, in which case the quantum of support receivable by the respondent would cease or lessen, thereby affecting the multiplicand and hence the lump sum of loss.

The evidence also showed that at the trial the appellants had conceded to the applicability of the statutorily fixed multiplier of 16 years of purchase and the primary questions that arose were:

[1] Whether having regard to the respondent's admission that she had spent only one half of the RM 750 on her own sustenance and the other half on her three children, her claim for loss of support herein must necessarily be limited to RM 375 per month and no more.

[2] Whether the statutorily fixed number of years of purchase as set out in s. 7(3)(iv)(d) applied to a claim by a parent for loss of support in respect of an unmarried son, or whether, in such a claim, the number of years of purchase ought to be taxed down in view of the possibility of subsequent marriage of the son had he not died.

[3] Whether in the face of the admission by the appellants to the appropriate multiplier being 16 years of purchase, the Court is precluded from deciding on the rights of the parties on the true view of the law.

Held:

Per Peh Swee Chin SCJ & Mohamed Dzaiddin SCJ

[1]The introduction of the words "loss of support" to sub-para (d) of s.7(3)(iv) of the Civil Law Act by the amendment of 1 October 1984 has not added anything new to the state of the law, but only incorporated what the Courts had always decided before such addition that damages were in fact loss of support. In the premises, the ruling by the learned Judge that the word

"support" therein should not be restricted to food and sustenance for the respondent but should equate with the pecuniary benefit the respondent received from her son so as to enable her to lead a certain life style, cannot be sustained.

[2] By virtue of s. 7(2) of the Act the only person entitled to claim in the instant appeal would be the respondent, she being the surviving parent of the deceased. However since loss of support is for all practical purposes translated into financial loss sustained by a dependant, it follows, logically, that the respondent herein can only claim for financial loss which she personally sustains as a dependant and not in any other way. On the facts, the respondent is therefore entitled to claim only RM 375 per month, the amount she had spent on herself and actually benefited from and not the whole of RM 750 per month she used to receive from her deceased son.

[3] What the respondent spent on her three children, in law, could not and did not constitute a financial loss to her and the fact that she was saddled with a duty in law to support her three children by virtue of the Guardianship of Infants Act 1961 cannot be of any assistance to her. Likewise, the reasoning of the learned trial Judge that what the mother did with the money given by her son during his lifetime was of no concern to the defendant tortfeasors, rational though it may seem, cannot alter the fact that the respondent was entitled only to what she had personally spent on herself and nothing more.

[4] Although the appellants had conceded at the trial that the multiplier for calculating the lump sum for loss of future support herein should be 16 years of purchase, this admission, despite amounting to an admission on a point of law, is not binding on the Court. It follows that even in the face of such admission the Court is not precluded from deciding on the rights of the parties on a true view of the law, with the result that it is still open for the Court both herein and below to consider on merits the submission of the appellants on the issue.

[5] It ought to be noted that sub-para (d) of s. 7(3)(iv) deals with the assessment of loss of earnings and not of loss of support. The distinction between these two phrases is worth emphasizing because it is an indisputable fact that the duration of loss of support sustained by a parent in respect of an unmarried child ordinarily and simply cannot be ever as long as the duration of the loss of support sustained by a widow and her children in respect of her husband.

[6] The state of the general system of law relating to a parent's claim as a dependant for loss of support in respect of an unmarried child before the enactment of sub-para (d) was that, such loss of support would either cease or be reduced considerably on the almost invariable contingency of subsequent marriage of such unmarried child. In the absence of any clear intention on the part of Parliament to depart from this general system of the law, the system, of necessity, must continue to prevail and apply. In the circumstances this Court is unable to agree with the view of the learned Judge that sub-para (d) applied to the claim of a parent as dependant for loss of support in respect of a deceased unmarried child. Taking into account the contingencies and circumstances of this case, the number of years of purchase in the instant appeal should be reduced to 7 years.

[7] For a case like the instant case, it is incumbent upon the Court, after having found the appropriate multiplier, to deduct from the number of years, the period for which the Court has ordinarily awarded pre-trial loss up to date of trial, before it is used to convert the basic monthly loss into a lump sum which will carry no interest. The facts herein showed that the deceased died on 5 November 1991 and the date of trial was 2 June 1993. This being the position, the 7 years should be reduced by the period from 5 November 1991 to 2 June 1993. In the circumstances the future loss of support in the instant case would only be RM 24,375, being RM 375 x 65 (months).

Per Edgar Joseph Jr SCJ

[1] It is obvious that the only persons qualified to benefit in an action under s. 7(2) of the Act are the persons specified therein, so that brothers and sisters of a deceased breadwinner would be excluded. In the present case therefore only the mother of the deceased, ie the respondent, would qualify to benefit in an action for loss of support under s. 7(2) thereof.

[2] The plain, ordinary and grammatical meaning of the expression "any loss of support

suffered" appearing in s. 7(3) must refer to the loss of support suffered by "the party for whom and for whose benefit the action is brought". In other words the loss suffered must be personal to the class of dependants specified in s. 7(2) so that a loss suffered by any other person not falling within that class must be excluded.

[3] Having regard to the respondent's admission, the loss of support suffered by her was RM 375 per month only. For the Court to increase the value of the loss of support to RM 750 per month, by adding the sum that was spent by the respondent on the three school going children to the sum she had spent on herself, would amount to departing from the plain, ordinary and grammatical meaning of the statutory language of s.7(2). The value of the dependency in this case should be reduced from RM 750 per month to RM 375 per month.

[4] The fact that the deceased had provided the respondent with funds not only to maintain herself but also to enable her to carry out the duty imposed upon her by ss 3 & 6 of the Guardianship of Infants Act 1961, so as to enable her to care for the support of the three school going children would therefore afford no grounds to justify the Court in expanding the class of persons specified under s. 7(2). The defendant tortfeasors can in no way be saddled with the obligations of the mother under ss. 3 & 6 thereof simply because there is no legal basis for doing so.

[5] It is manifestly clear that in enacting the detailed provisions of proviso (d) to s. 7(3)(iv) Parliament had intended to take away the discretion of the Court to select the appropriate multiplier, in assessing loss of earnings of a deceased person for purposes of a claim for loss of support. This being the case, the proposition that notwithstanding the provisions of proviso (d) thereof, the Court still retains a discretion to reduce the number of years of purchase to a period less than 16 years to provide for contingencies, such as the probability of the deceased marrying had he not died, is untenable. To accede to such submission would amount to empowering the Court to rewrite the statute or brush aside explicit statutory provisions and select in the exercise of its discretion a suitable multiplier. This certainly is not the function of the Court. When a question of statutory interpretation arises, the duty of the Court is simply to give effect to the will of Parliament as expressed in the law and nothing more.

[6] In the premises the learned trial Judge was right in ruling that contingencies such as the possibility of the deceased marrying had he not died in the accident, and as a result, his contributions for the support of his mother ceasing or being considerably reduced, "have been built into the statutory formula of 16 years" and that therefore he was bound to adopt that statutory formula since the deceased was 25 years of age at the time of his death. It follows that this Court is not at liberty to reduce the number of years' purchase from 16 years to 7 years or at all. And for the same reason the Court cannot be said to have a discretion to make any deduction from the number of years of purchase, the period for which the Court might have awarded pre-trial loss of support up to date of trial. Based on the above, the appeal is therefore partly allowed.

[Appeal allowed. Order of the Court below varied accordingly].

[Bahasa Malaysia Translation of Headnote]

TORT: Tuntutan tanggungan-Kehilangan penyara-Kuantum-Samada tanggungan hanya berhak kepada kehilangan sepertimana yang ditanggung olehnya sendiri-Tanggungan hanya menggunakan separuh dari jumlah yang diterima daripada si mati untuk nafkahnya-Samada separuh dari kuantum kehilangan penyara patut dikurangkan-Seksyen 7(3) Akta Undang-Undang Sivil 1956.

TORT: Tuntutan tanggungan-Kelas tanggungan-Seksyen 7(2) Akta Undang-Undang Sivil 1956-Samada boleh diperluaskan untuk memasukkan adik dan kakak simati-Tanggungan dibebani dengan kewajipan di bawah Akta Penjagaan Budak 1961 untuk menanggung 3 kanak-kanak yang masih kecil-Samada satu alasan untuk meluaskan kelas tanggungan-Tuntutan bagi kehilangan penyara termasuk jumlah yang dibelanjakan ke atas anak-anak-Samada boleh disara-Samada tuntutan terlalu jauh untuk diramalkan.

TORT: Tuntutan tanggungan-Simati berumur 25 tahun pada waktu kematian-Pendarab-Angka yang hendak didarab-Formula statutori 16 tahun belian-Seksyen 7(3)(iv)(d)-Samada mandatori-Samada tertakluk kepada semakan Mahkamah.

PERKATAAN & ISTILAH: "Saraan" "Apa-apa kehilangan penyaraan yang dialami"-Seksyen 7(3)(iv)(d) Akta Undang-Undang Sivil 1956.

Responden, seorang balu dan suri rumah, telah kehilangan anak lelakinya yang berumur 25

tahun yang bertanggungjawab terhadap saraannya, dalam satu kemalangan jalanraya dalam tahun 1991. Sebelum kematian anaknya, responden telah menerima daripada anaknya anggaran RM750 sebulan dan daripada jumlah ini beliau membelanjakan separuh untuk nafkahnya sendiri dan separuh lagi untuk perbelanjaan ketiga-tiga anak kecilnya, adik simati. Responden memulakan tuntutan tanggungan ke atas perayu bagi kehilangan bantuan masa depan di bawah Seksyen 7(3) Akta Undang-Undang Sivil 1956, dan dalam penghakiman yang menyusul, Mahkamah Tinggi telah mengawardkan kepada responden RM144,000 yang merupakan kehilangan saraan sebanyak RM750 sebulan yang menjangkau sepanjang statutori 16 tahun belian.

Perayu telah merayu terhadap bahagian ini dalam penghakiman tersebut dan berhujah di hadapan Mahkamah ini bahawa kuantum ini telah dikira dengan salahnya kerana Tuan Hakim yang bijaksana, dalam mengambilkira RM750 sebulan sebagai angka asas untuk menaksirkan kehilangan saraan, telah gagal untuk mempertimbangkan bahawa kehilangan saraan sebenar yang dialami oleh responden adalah hanya sebahagian daripada angka tersebut, dan keduanya bahawa dalam menetapkan pendarab pada 16 tahun belian, Tuan Hakim yang bijaksana telah tidak mempertimbangkan kemungkinan perkahwinan simati sekiranya beliau tidak mati, dalam keadaan mana kuantum yang diterima oleh responden akan tamat atau berkurangan, yang akan menjejaskan angka yang hendak didarab dan dengan itu jumlah pukal kehilangan saraan.

Keterangan juga menunjukkan bahawa di dalam perbicaraan perayu telah menyetujui pemakaian pendarab statutori tetap 16 tahun belian dan persoalan utama yang timbul adalah:

(1) Samada dalam mempertimbangkan pengakuan responden bahawa beliau telah membelanjakan hanya separuh dari RM750 ke atas penyaraan dirinya sendiri dan separuh lagi atas ketiga-tiga anak kecilnya, tuntutan kehilangan bantuannya mestilah dihadkan kepada RM375 sebulan dan tidak lebih dari itu.

(2) Samada bilangan tahun belian yang ditetapkan secara statutori itu sepertimana yang dibentangkan dalam Seksyen 7(3)(iv)(d) terpakai kepada suatu tuntutan oleh seorang ibu bagi kehilangan saraan berhubung dengan seorang anak lelaki yang belum berkahwin, atau samada, dalam tuntutan yang sedemikian, bilangan tahun belian sepatutnya dikurangkan memandangkan adanya kemungkinan perkahwinan kemudian anaknya sekiranya ia tidak mati.

(3) Samada dengan adanya pengakuan oleh perayu bahawa pendarab yang wajar adalah 16 tahun belian, Mahkamah dihalang daripada menentukan hak-hak pihak tersebut menurut pandangan sebenar Undang-Undang.

Per Peh Swee Chin HMA & Mohamed Dzaiddin HMA

[1] Pengenalan perkataan-perkataan "kehilangan bantuan" kepada perenggan-kecil (d) dari s. 7(3)(iv) Akta Undang-Undang Sivil melalui pindaan 1 Oktober 1984 tidak menambah apa-apa perkara yang baru kepada keadaan undang-undang, tetapi hanya menggabungkan apa yang memang sering diputuskan oleh Mahkamah-Mahkamah sebelum penambahan yang sedemikian bahawa gantirugi adalah pada hakikatnya merupakan kehilangan saraan. Dalam keadaan yang sedemikian, keputusan oleh Tuan Hakim yang bijaksana bahawa perkataan "saraan" di sini tidak seharusnya terhad kepada makanan dan saraan untuk responden tetapi sepatutnya menyamai faedah kewangan yang diterima oleh responden daripada anak lelakinya itu bagi membolehkannya menjalani cara hidup yang tertentu, tidak boleh dibenarkan.

[2] Menurut s. 7(2) Akta tersebut satu-satunya orang yang berhak untuk menuntut dalam rayuan semasa ini adalah responden, beliau merupakan ibu simati yang masih hidup. Walaubagaimana pun, oleh kerana kehilangan saraan adalah untuk kesemua tujuan praktikal diterjemahkan sebagai kehilangan kewangan yang dialami oleh seorang tanggungan, adalah jelas secara logiknya, bahawa responden di sini hanya boleh menuntut untuk mendapatkan kehilangan kewangan yang mana beliau sendiri alami sebagai seorang tanggungan dan tidak menurut mana-mana cara yang lain. Menurut fakta, responden berhak untuk hanya menuntut RM375 sahaja sebulan, jumlah yang telah dibelanjakan ke atas dirinya sendiri dan yang

sebenarnya dia mendapat faedah daripadanya dan bukannya keseluruhan RM750 sebulan separti yang belian selalu terima daripada simati.

[3] Apa yang responden belanjakan ke atas ketiga-tiga anaknya menurut undang-undang, tidak boleh dan tidak merupakan kehilangan kewangan kepadanya dan hakikat bahawa beliau telah dibebankan dengan kewajipan menurut undang-undang untuk menyara ketiga-tiga anaknya menurut Akta Penjagaan Budak 1961 tidak dapat membantu kesnya. Begitu juga, alasan Tuan Hakim yang bijaksana bahawa apa yang dilakukan oleh ibu tersebut dengan wang yang diberikan oleh anaknya ketika hayatnya tidak harus dipersoalkan oleh defendan selaku pelaku-pelaku tort, walaupun ianya kelihatan rasional, tidak dapat mengubah fakta bahawa responden adalah berhak hanya kepada apa yang telah dibelanjakan sendiri oleh beliau ke atas dirinya sendiri dan tidak lebih daripada itu.

[4] Walaupun perayu telah bersetuju di perbicaraan tersebut bahawa pendarab untuk mengira jumlah pukal bagi kehilangan saraan masa depan di sini seharusnya menjadi 16 tahun beli, pengakuan ini, walaupun membawa kepada pengakuan terhadap satu perkara undang-undang, tidak mengikat Mahkamah. Ini bermakna bahawa walaupun berhadapan dengan pengakuan yang sedemikian Mahkamah tidak terhindar untuk memutuskan hak-hak pihak tersebut pada pandangan sebenar undang-undang yang bermakna bahawa ianya masih terbuka kepada Mahkamah di sini dan juga di bawah untuk menimbangkan atas merit penghujahan perayu atas isu tersebut.

[5] Harus diperhatikan bahawa perenggan-kecil (d) s. 7(3)(iv) memperkatakan taksiran kehilangan pendapatan dan bukannya kehilangan bantuan. Perbezaan kedua-dua ungkapan ini perlu ditegaskan kerana ianya satu fakta yang tidak boleh dipertikaikan bahawa tempoh masa kehilangan bantuan yang dialami oleh seorang ibu berkaitan dengan anak yang tidak berkahwin biasanya tidak boleh menjadi selamanya seperti tempoh masa kehilangan bantuan yang dialami oleh seorang balu dan anak-anaknya berkaitan dengan suaminya.

[6] Keadaan umum sistem undang-undang berhubung dengan tuntutan seorang ibu sebagai tanggungan bagi kehilangan saraan berkaitan dengan anak yang belum berkahwin sebelum enakmen perenggan-kecil (d) adalah bahawa, kehilangan saraan yang sedemikian akan samada berhenti atau dikurangkan secara ketaranya oleh perkahwinan kemudian anak sedemikian yang belum berkahwin itu yang kemungkinan terjadinya adalah sangat besar. Dalam ketiadaan apa-apa niat jelas Parlimen untuk menyimpang dari sistem umum undang-undang, sistem tersebut, semestinyalah terus dikekalkan dan dipakai. Dalam keadaan yang sedemikian, Mahkamah ini tidak dapat bersetuju dengan pandangan Tuan Hakim yang bijaksana bahawa perenggan-kecil (d) terpakai kepada tuntutan seorang ibu sebagai tanggungan bagi kehilangan saraan berhubung dengan kematian anak yang tidak berkahwin. Mengambilkira jangkaan dan keadaan kes ini, bilangan tahun pembelian dalam rayuan semasa ini seharusnya dikurangkan kepada 7 tahun.

[7] Bagi kes seperti kes semasa ini, adalah wajib bagi Mahkamah, selepas mendapati pendarab yang wajar, menolak dari bilangan tahun-tahun tersebut, tempoh-tempoh dimana Mahkamah secara lazimnya mengawardkan kehilangan pra-perbicaraan sehingga ke tarikh perbicaraan, sebelum ianya digunakan untuk menukar asas saraan bulanan kepada satu jumlah yang pukal yang mana tidak akan mempunyai faedah. Fakta-fakta di sini menunjukkan bahawa si mati telah mati pada 5 November 1991 dan tarikh perbicaraan adalah 2 Jun 1993. Oleh kerana beginilah kedudukannya, 7 tahun tersebut seharusnya dikurangkan daripada tempoh 5 November 1991 hingga 2 Jun 1993. Dalam keadaan yang sedemikian, kehilangan bantuan masa depan dalam kes semasa ini adalah hanya sebanyak RM24,375, iaitu RM375 x 65 bulan.

Per Edgar Joseph Jr. HMA

[1] Adalah jelas babawa satu-satunya orang yang layak untuk mendapat faedah dalam sesuatu tindakan di bawah s. 7(2) Akta tersebut adalah orang-orang yang ditentukan dalamnya, dan ini bermakna adik atau abang seseorang pencari nafkah adalah diketepikan. Dalam kes semasa ini, hanya ibu simati iaitu responden layak untuk menikmati faedah dalam sesuatu tindakan bagi kehilangan saraan di bawah s. 7(2).

[2] Maksud yang nyata, biasa dan betul dari segi nahu ungkapan "apa-apa kehilangan bantuan yang dialami" yang terdapat dalam s. 7(3) semestinya merujuk kepada kehilangan bantuan yang dialami oleh "pihak bagi siapa dan untuk siapa faedah tindakan ini dimulakan." Dalam ertikata lain, kehilangan yang dialami mestilah tersendiri kepada kelas tanggungan yang ditentukan dalam s. 7(2) supaya kehilangan bantuan yang dialami oleh mana-mana orang lain yang tidak terdiri daripada kelas tersebut mesti dikeluarkan.

[3] Dalam mempertimbangkan pengakuan responden, kehilangan bantuan yang dialami oleh beliau adalah RM375 sebulan sahaja. Bagi Mahkamah meningkatkan nilai kehilangan bantuan kepada RM750 sebulan, dengan menambahkan jumlah yang telah dibelanjakan oleh responden ke atas ketiga-tiga anak yang masih bersekolah kepada jumlah yang telah beliau belanjakan ke atas dirinya, akan menyebabkan Mahkamah menyimpang daripada maksud nyata, biasa dan betul dari segi nahu bahasa statutori s. 7(2). Nilai tanggungan dalam kes ini seharusnya dikurangkan daripada RM750 sebulan kepada RM 375 sebulan.

[4] Hakikat bahawa simati telah memberikan responden wang bukan sahaja untuk menampung dirinya sendiri tetapi juga untuk membolehkannya melaksanakan kewajipan yang dikenakan kepadanya oleh seksyen-seksyen 3 dan 6 Akta Penjagaan Budak 1961, bagi membolehkannya menyara hidup ketiga-tiga anak yang masih bersekolah itu, dengan itu, tidak boleh menjadi alasan bagi Mahkamah meluaskan kelas orang-orang yang ditentukan di bawah s. 7(2). Defendan sebagai pelaku tort tidak boleh dibebankan dengan tanggungjawab ibu tersebut di bawah seksyen-seksyen 3 dan 6 di dalamnya semata-mata kerana tidak terdapat dasar undang-undang untuk melakukannya.

[5] Adalah dengan ketaranya jelas bahawa dalam memperbuat peruntukan-peruntukan yang diterangkan secara terperinci dalam proviso (d) s. 7(3)(iv) Parlimen bertujuan untuk mengambil budibicara Mahkamah untuk memilih pendarab yang wajar, dalam menaksirkan kehilangan pendapatan orang yang telah mati bagi tujuan tuntutan kerana kehilangan saraan. Oleh yang demikian, saranan bahawa walaupun dengan mengambil kira peruntukan proviso (d) tersebut, Mahkamah masih ada budibicara untuk mengurangkan bilangan tahun pembelian kepada satu tempoh yang kurang daripada 16 tahun untuk menyesuaikan dengan keadaan dan kemungkinan, seperti kemungkinan simati berkahwin sekiranya beliau tidak mati, tidak dapat dipertahankan. Untuk menyetujui penghujahan yang sedemikian akan membawa kepada memberi kuasa kepada Mahkamah untuk menulis semula statut atau mengenepikan peruntukan-peruntukan statutori yang tegas dan dalam melaksanakan budibicaranya, memilih sebaliknya satu pendarab yang sesuai. Ini sudah tentunya bukan fungsi Mahkamah. Apabila persoalan pentafsiran statut terbit, tugas Mahkamah hanyalah untuk menguatkuasakan kehendak Parlimen sepertimana yang dinyatakan dalam undang-undang dan tidak lebih daripada itu.

[6] Oleh hal yang demikian, Tuan Hakim yang bijaksana adalah betul dalam memutuskan bahawa jangkaan seperti kemungkinan si mati berkahwin sekiranya dia tidak mati dalam kemalangan itu, dan akibat daripada itu, sumbangannya untuk menyara ibunya menjadi terhenti atau amat berkurangan "telah diabadikan dalam formula statutori 16 tahun", dan bahawa dengan itu beliau wajib menerima-pakai formula statutori itu oleh kerana simati berumur 25 tahun pada ketika kematiannya. Ini bererti, Mahkamah tidak bebas untuk mengurangkan bilangan tahun belian daripada 16 tahun kepada 7 tahun atau apa-apa tahun pun. Dan atas alasan yang sama, Mahkamah tidak boleh dikatakan mempunyai budibicara untuk membuat apa-apa penolakan daripada bilangan tahun belian, tempoh pra-perbicaraan di mana Mahkamah mungkin memberikan kehilangan bantuan sehingga kepada tarikh perbicaraan. Atas alasan-alasan diatas, rayuan ini adalah dibenarkan sebahagiannya.

[Rayuan dibenarkan. Perintah Mahkamah di bawah diubah sekadarnya].

[Ed. Note: For the High Court decision, please see page 792].

Cases referred to:

Davies v. Powell Duffryn Associated Collieries [1942] AC 601, 617 ***(refd)***

Burgess v. Florence Nightingale Hospital [1955] 1 QB 349 ***(refd)***

Sykes v. North Eastern Rail 32, LT 199; [1875] 44 LJCP 191 ***(refd)***

Berry v. Humm & Co. [1915] 1 KB 627 ***(refd)***

Societie Banque v. Girdhari AIR 1940 PC 90 ***(refd)***

Phang Ah Chee v. Chong Swee Sang [1985] 1 MLJ 155 ***(foll)***

Beswick v. Beswick [1968] AC 58 ***(foll)***
George Wimpey & Co Ltd. v. BOAC [1955] AC 169, 191 ***(foll)***
Graham v. Dodds [1983] 2 All ER 953, HL ***(foll)***
Dirkje v. Mohd Noor bin Baharom & Ors. [1990] 3 MLJ 103, 108 ***(foll)***
Overseas Tankship (U.K.) v. Morts Dock and Engineering Co. (The Wagon Mound [1961] AC 388 (PC) ***(refd)***
West Coast Hotel Co. v. Parrish, 300 US 379 at 404 [1937] ***(refd)***
Sunprinting and Publishing Association v. Remington Paper and Power Co. Inc. 130 NE 470 ***(refd)***
Cartledge v. E. Jopling & Sons Ltd [1963] AC 758
Gwynne Buruell [1840] 7 Cl. J. F. 572 ***(refd)***
Stock v. Frank Jones (Tipton) Ltd. [1978] 1 WLR 231 ***(refd)***
Mohamed Noor bin Othman & Ors. v. Haji Mohamed Ismail [1988] 3 MLJ 82, at 84 ***(refd)***
Magor and St. Mellons Rural District Council v. Newport Corporation [1952] AC 189 ***(refd)***

Legislation referred to;
Civil Law Act 1956, ss. 7(1), (2), (3)(iv)(d)
Guardianship of Infants Act 1961, ss. 3 & 6

For the appellants - K. S. Dass (N. Chandra Mohan with him); M/s. K. Sila Dass & Partners
For the respondent - J. F. Pereira (I. Pereira with him); M/s. M. S. Miranda & Co.

JUDGMENT

Peh Swee Chin SCJ:
The notice of appeal to the Supreme Court that was filed relates only to that part of the learned trial Judge's decision as concerns the award against the defendants of the loss of future support in the sum of RM144,000 on the basis of the datum figure or basis figure of RM750 p.m. in a fatal accident claim, not involving a claim for "lost years".

There is more than meets the eyes from this seemingly short run of the mill appeal for it raises several points, one of which is polemical ie. as to whether in a claim by a parent for loss of support in respect of an unmarried son, the statutorily-fixed number of years' purchase as set out in s. 7(3)(IV)(d) of the Civil Law Act 1956 is applicable, [hereafter the sub-para (d)]. We now deal with the points.

In the claim by a mother for loss of support herein in a fatal accident case in respect of an unmarried son, the learned trial Judge has assessed, from the evidence, the loss of support sustained by the mother at RM750 p.m. which, of course was the basic figure which could be and was turned into a lump sum by taking a certain number of years' purchase. The said sum was found by the learned trial Judge to be the average monthly sum of money the deceased son had given her prior to his death.

First, complaint was made by learned Counsel for the appellants/defendants, (hereafter the defendants) before his Lordship and before us here to the effect that the said sum of RM750 should be reduced by about half because of the said mother's own evidence that she spent only half of this sum on herself and the other half was spent on 3 other school-going children of hers, the sibling of the deceased unmarried child. The learned trial Judge refused to budge from the position taken that the basic figure for assessing for the loss of support would remain at RM750 p.m. for several reasons.

This submission was dealt with by the learned trial Judge in the following manner. It was said that the sub-para (d) of the Civil Law Act 1956 was amended to include a new expression; "loss of support" with effect from 1 October 1984, as compared with the old s. 7 which provided for "damages from death". It was further said that " the word support should not be restricted to food or sustenance for the plaintiff but should equate with the pecuniary benefit the plaintiff received from her son so as to enable her to lead a certain life style". The deceased son had given her the sum not only to maintain herself but also for the maintenance of her 3 other minor children, for whose maintenance by virtue of Guardianship of Infants Act 1961, the said mother was responsible, (the father in question having predeceased the said deceased son), and in any event what the said mother did with the money was of no concern to the tortfeasors.

In my view, the introduction of the words, "loss of support", has not added anything new to the state of the law, but only incorporated what the Courts had always decided before such addition that such damages were in fact loss of support. Had the section incorporated the formula for assessment of such loss of support as explained by Lord Wright in *Davies v. Powell Duffryn Associated Collieries* [1942] AC 601, 617, it would not have similarly changed the law.

The ground of relying on the Guardianship of Infants Act 1967, in our view is unacceptable, for reasons below which will become apparent.

As regards the other reasoning of the learned trial Judge that what the mother did with the

money given by her son in his lifetime was of no concern to the defendants, it sounds quite rational, and was in fact reinforced by an unreported judgment in Kota Bharu Civil Suits Nos 23 and 1 of 1972, (*Lai Look Sow v. Osman bin Abbas*) in which, in a similar situation, a son's contribution was adopted intact without deduction.

However, under s. 7 of the Civil Law Act 1956, the persons entitled to claim such loss of support in respect of a deceased person are wife, husband, parent and child only, not including a brother or sister. The only person entitled to claim in the instant appeal would therefore be the surviving parent, ie. the said mother, unlike England, where the class of persons entitled to claim under corresponding legislation expressly includes a brother and sister. Therefore, it would assist nobody to say that the said mother was bound by law to support her other minor children.

Further, in our opinion, loss of support is for all practical purposes translated into financial loss sustained by a dependent. Having regard to the class of persons entitled as stated above, it is a logical conclusion to say that a plaintiff can only claim in such a case for financial loss which he sustains as a dependent and not in any other way.

The question then arises is that whether such a logical conclusion is supported by the cases in the reports, other than the unreported case mentioned above. There are unfortunately rather few cases on it, and even then, they are only persuasive and not direct on the point. In *Burgess v. Florence Nightingale Hospital* [1955] 1 QB 349, a husband and his wife were professional dancing partners, and the wife died due to negligence of a surgeon. The husband claimed under the corresponding legislation in England of our s. 7 of the Civil Law Act 1956, it was held to the effect that the basis for damages in principle was that the benefit must be a benefit arising from the relationship between the parties, as husband and wife, and the husband could not claim for loss of services of his wife as a dancing partner and in the end could claim only a modest sum for the deceased wife's contribution out of her share of earnings to the joint living expenses and also for loss of services in performing household duties, following the case of *Sykes v. North Eastern Rail 32, LT 199*; [1875] 44 LJCP 191.

It is implicit from the judgment that the husband could not claim, as loss of support, the deceased wife's share of earnings from such partnership as professional dancing partners but only a small portion of the relevant sum attributable to her as representing her contribution to the sum for joint living expenses of both husband and wife. In other words, the husband could claim only such loss of support as sustained as a dependent from the wife's contribution to the joint living expenses and not her separate income as a dancing partner. The Court there also awarded a sum for loss of the wife's services in the discharge of household duties.

In *Sykes supra*, the deceased son was prior to his death working for his father who fully paid the deceased son for work done. It was held when claiming for loss of support, that the father, though normally entitled to claim such loss of support, could not claim it as what the father lost was the benefit of fully-paid services in his capacity as employer to his son, not, I would like here to add further, as dependent, and that it would have been different if the said father had enjoyed the services from his son, rendered gratuitously as gratuitous services are equivalent to pecuniary benefit, please see *Berry v. Humm & Co.* [1915] 1 KB 627. In Berry case, the gratuitous services were rendered by a wife at home but I do not think that whether such gratuitous services were rendered at home or at the work site would make any difference between them for sustaining such claim.

The cases of *Sykes & Burgess supra* tend to lend great weight to the logical conclusion referred to above, analogically, of course, for the situation revealed in our instant appeal did not exist there so they could not be expected to have addressed themselves to the issue concerned here. It is regretted that these two cases were not cited to the learned trial Judge.

I therefore agree with the learned Counsel for the defendants that the sum of RM750 p.m. as the monthly net loss of support be reduced, and I accordingly reduce it to RM375 p.m.

Another unusual situation has occurred. The defendants have conceded at the trial that the multiplier for calculating the lump sum for loss of future support should be 16 years of purchase, the deceased being 25 years of age at the time of the fatal accident, following the statutorily fixed

multiplier as mentioned in the sub-para (d) which is set out below:

> Section 7(3) The damages which the party who shall be liable under subsection (1) to pay to the party for whom and for whose benefit the action is brought shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for any loss of support suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default of the party liable under subsection (1).
>
> Provided that -
>
> (i) ...
> (ii) ...
> (iii) ...
> (iv) in assessing the loss of earnings in respect of any period after the death of a person where such earnings provide for or contribute to the damages under this section the Court shall:
>
> (a) ...
> (b) ...
> (c) ...
> (d) take into account that in the case of a person who was of the age of thirty years and below at the time of his death, the number of years' purchase shall be 16; and in the case of any other person who was of the age range extending between thirty one years and fifty four years at the time of his death, the number of years' purchase shall be calculated by using the figure 55, minus the age of the person at the time of death and dividing the remainder by the figure 2.

Having so conceded, it was then surprisingly submitted by the defendants that such loss of dependency (ie. support) would have reduced or ceased in the event of the deceased son getting married had he lived. Such ordinarily unacceptable submission in view of the said act of conceding aforesaid was made both in the Court below and before us. Could the defendants do so?

What was conceded about the multiplier being 16 years' purchase, in the Court below appears clearly to amount to an admission on a point of law. However, on a point of law, a Court is not precluded from deciding on the rights of the parties on a true view of the law, and the admission is not binding on it. See *Societie Banque v. Girdhari* AIR 1940 PC 90. Such surprising submission of the defendants could then be considered on its merits.

The learned trial Judge does not appear to have possibly been influenced by this conceding on the part of the defendants, for arguments were heard and the learned trial Judge went on further to hold that the possibility of marriage of the deceased son had he lived was one of the factors which had been taken into account as "having been built into the statutory formula of 16 years' purchase". In other words, the learned trial Judge felt bound to adopt the statutory 16 years of purchase for converting the basic figure referred to above into a lump sum. Should he feel bound to do so?

Let us examine the sub-para (d) reproduced above. It deals with first the assessment of loss of earnings, and not, be it noted, loss of support. They are related to each other but are yet distinctly apart, for it will be remembered that the earnings of the deceased, or the amount of such earnings by the deceased by virtue of his death is merely the starting point in assessing the loss of support sustained by a dependent, before taking account of personal expenses of the deceased and contingencies, see *Davies v. Powell Duffryn Collieries supra.*

The distinctiveness of the loss of support from the loss of earnings is worth emphasizing once more because it is an indisputable fact that the duration of loss of support sustained by a parent in respect of an unmarried child ordinarily and simply cannot be ever as long as the duration of the loss of support sustained by a widow and her children in respect of her husband, for example. Please see Federal Court's decision on this point to the same effect in *Phang Ah Chee v. Chong Swee Sang* [1985] 1 MLJ 155 in which the number of years' purchase fixed by the Court of first instance at 17 years, was reduced to 7 years for a mother who claimed similarly as a dependent in respect of her deceased unmarried child. This Federal Court case was decided before the sub-para (d) came into force, it should be noted.

Having regard to the state of the general system of the law before the coming into force of the sub-para (d) on 1 October 84, the sub-para (d) seems to be tailor-made for a claim by a spouse and children as dependents in respect of a deceased spouse, because under the general system of law, both before and after the enactment of the sub-para (d), the duration of a claim for loss of support is usually as long as the deceased's loss of earnings which would have been earned had the deceased lived.

On the other hand, the state of the general system of law relating to a parent's claim as a dependent for loss of support in respect of an unmarried child before the enactment of the sub-para (d) was that such loss of support would either cease or be reduced considerably on the almost invariable contingency of subsequent marriage of such unmarried child. If the learned Judge was right, it would mean that this aspect of the law was swept away or changed.

There is one important principle of statutory interpretation which has been applied repeatedly over the years. It is this, that it is in the highest degree improbable that Parliament would depart from the general system of law without expressing its intention with irresistible clearness. I find such clearness missing. To give an example, Britain's Courts of Judicature Act, 1873 provided that an *injunction* might be granted in all cases in which the Court considered it "just and convenient", it was held by the House of Lords in *Beswick v. Beswick* [1968] AC 58 to the effect that such general words would still mean that such *injunction* might be granted only in the usual infringement of recognized legal or equitable right. In other words, it is a fairly strong presumption against alteration in the law except with such irresistible clearness expressed.

I do not think it will come to this that arguments on this question of interpretation are evenly balanced, and if it were so, I would agree also "that interpretation should be chosen which involves the least alteration of the existing law", per Lord Reid in *George Wimpey & Co. Ltd v. BOAC* [1955] AC 169, 191.

In the result, I am unable to agree with the view of the learned trial Judge that sub-para (d) applied to the claim in the instant case, ie. the claim of a parent as dependent for loss of support in respect of a deceased unmarried child.

I therefore agree with the contention of the learned Counsel for the appellants/defendants that the number of years' purchase should be reduced and I hereby reduce it to 7 years, after taking into account of the contingencies and circumstances in this case.

I assume that contingencies had been taken into account by the legislature in fixing statutory numbers of years' purchase as past recent local cases do not indicate the lump sum obtained by basing on the basic figure or monthly nett loss and applying the number of years' purchase has been further taxed down by taking account of contingencies. A Court can either take account of such contingencies in fixing the number of years' purchase; or doing so on the lump sum after applying the number of years' purchase to the basic figure. Either way is permissible. It is in most cases now academic as legislature has fixed the number of years' purchase so long it is borne in mind that contingencies have already been taken into account in fixing the statutory numbers of years' purchase for assessing a man's loss of earnings.

There is another point. Having found the number of years' purchase, (or some people prefer to call it a multiplier), for a case like the instant case, after of course taking account of the contingencies; then from the number of years should be deducted the period, for which the Court has ordinarily awarded pre-trial loss of support up to date of trial, before it is used to convert the basic monthly loss into a lump sum which shall carry no interest. This is in accordance with *Graham v. Dodds* [1983] 2 All ER 953, HL.

Here the date of trial was 2 June 1993 when judgment was given at the conclusion of the trial. The deceased unmarried son died on 5 November 1991 . The 7 years should be reduced by the period from 5 November 1991 to 2 June 1993, leaving a period of 65 months. The lower Court has not deducted this period.

In converting the basic figure of monthly nett loss into a lump sum by taking a number of years' purchase, whether such number of years' purchase is arrived at by assessment in each individual case, or is fixed statutorily with effect from 1 October 1984 for assessing a man's loss of earnings, should annuity tables be used because of the word "purchase" or should such number of years' purchase be treated as a direct mathematical multiplier?

This Court in *Dirkje v. Mohd Noor bin Baharom & Ors.* [1990] 3 MLJ 103, 108 when applying the statutorily fixed number of 16 years' purchase, treated it as a direct multiplier, and for the sake of uniformity, I would follow suit. The future loss of support would be RM375 x 65 (months) =RM24,375.

The appeal of the appellants/defendants is therefore allowed to the extent that the future loss of support would be reduced to RM24,375 which

shall carry no interest with costs here but in the Court below, the costs remains payable by the appellants/defendants to the respondent, and the order of the learned trial Judge dated 2 June 1993 is varied accordingly.

I have since been informed that a member of the panel of Judges for the sitting during which the above appeal was heard, proposes to deliver a dissenting judgment, it is necessary that I should add that YA Dato' Justice Mohamed Dzaiddin bin Abdullah SCJ, the other member of the panel, agrees with this judgment and has nothing to add. This judgment is therefore to be regarded as a majority judgment that determines the above appeal.

Edgar Joseph Jr. SCJ:

This was the defendants' appeal against the quantum of damages only from the judgment of Mr. Justice Richard Talalla, in a running down case, in which the plaintiff, a widow and housewife ("the mother"), had lost her 25-year-old son ("the deceased"), upon whom she was dependent for support, in a road accident, her claim being a dependency claim under s. 7(3) of the Civil Law Act 1956, ("the Act").

At the outset, the Judge pointed out that Senior Counsel for the defendants had **conceded** the mother's claim that the deceased's earnings per month were RM1,500 **and** that the statutory multiplier was 16 years - no doubt - having regard to the provisions of proviso (iv)(d) to s.7(3) of the Act which are hereinafter reproduced and discussed.

The Judge next referred to the familial position of the mother - which was also agreed - in the following terms:

> The parties agreed that the plaintiff's familial position was that she was born on 25 January 1943, married at 23 years of age and, apart from the deceased, had eight living children, the elder five being female born between 1964 and 1972, all being married except the last who was working as a shop assistant, that the three youngest were schoolboys born between 1974 and 1977, that her husband was a rubber tapper who passed away in 1986 aged 51 years, that he was tapping for others and was as well an odd job labourer and that her deceased son was born on 2 April 1966 and killed on 5 November 1991.

The Judge then found, as a fact, that at the time of the death of the deceased, the mother was just a housewife with three school going children, and that she had been in receipt of a sum of RM750 p.m. from the deceased, of which she had spent half on herself, and the other half, on these children.

In considering the submissions of Counsel, the Judge drew attention to the undoubted fact that the **sole question** for his determination - and this had been **agreed** by Counsel - was this: what was the appropriate **multiplicand** to apply in quantifying the plaintiff's claim for loss of support under s. 7(3) of the Act?

More particularly, what the Judge said regarding the rival contentions of Counsel, was this:

> Both Counsel agreed that the deceased was in good health for the purposes of proviso (a) to s.7(3)(iv) of the Act and that only the multiplicand was in issue and in this regard that the 3 youngest children only were under the mother's support at the time her son was killed. Counsel for the plaintiff submitted that the multiplicand should be RM750 per month whereas Counsel for the defendants suggested a multiplicand of RM250 to RM300 arguing that what the plaintiff had suffered was the loss of the support given by the deceased, that pursuant to s. 7(2) of the Act the action was for the benefit of the mother of the deceased, that on her evidence of the money she received from the deceased she spent about half on herself and half on her 3 children and accordingly the only loss she had suffered was the amount she spent on herself.

The Judge next construed s. 7(3) of the Act in this way:

> ... it is significant that s. 7(3) was amended with effect from 1 October 1984. The amendment introduced a new expression "loss of support" and it is significant that that expression is preceded by the word "any". The old s. 7(3) provided for damages for loss resulting from the death whereas the new s. 7(3) provides for damages for any loss of support suffered. As I see it the word "support" should not be restricted to food or sustenance for the plaintiff but should equate with the pecuniary benefit the plaintiff received from her son so as to enable her to lead a certain life style. He was obviously a dutiful and loving son. He relieved his mother of the necessity of going out to work as a rubber tapper or engage in similar arduous labour. He specifically stopped her from working. Instead he provided her with funds not only to maintain herself but also to enable her to carry out the duty that had befallen her on the demise of her husband namely being responsible for the support, health and education

of the minor children. See ss. 3 and 6 of the Guardianship of Infants Act 1961. With the son's death the plaintiff's life style has been taken away from her. She has had to go out and work. Accordingly in my view she has suffered loss of support to the extent of the money the son gave her namely an average of RM750 per month. What she chose to do with the money her son gave her should not be the concern of the defendant tortfeasors. The measure of damages is the pecuniary loss suffered by the plaintiff as a result of the death of her son. The pecuniary loss is the actual benefit of which the plaintiff has in fact been deprived. So said the Federal Court in the case of *Yap Ami & Anor. v. Tan Hui Pang* [1982] 2 MLJ 316 at page 320.

To put the matter in perspective the provisions of the Act which it would be convenient to reproduce at this stage, are sub-section (1) and (2) of s. 7.

The provisions read as follows:

> 7(1) - Whenever the death of a person is caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death has been caused under such circumstances as amount in law to an offence under the Penal Code.
>
> 7(2) - Every such action (referring to an action under s. 7(1)) shall be for the benefit of the wife, husband, parent, and child, if any, of the person whose death has been so caused and shall be brought by and in the name of the executor of the person deceased.

It is obvious that the only persons qualified to benefit in an action under s. 7(2) of the Act, are the persons specified therein, so that brothers and sisters of a deceased bread winner would be excluded.

In the present case, therefore, only the mother of the deceased would qualify to benefit in an action for loss of support under s. 7(2).

Having said that, the question of substance regarding this part of the case, was whether, having regard to the mother's admission that of the RM750 p.m. which she had received from the deceased, she had spent about one half on herself and the other half on her three schoolgoing children, her claim for loss of support under s. 7(3) of the Act was thereby limited to the amount she had spent on herself and no more or whether it could be increased, to include in addition, what she had spent on her children?

In my view, the plain, ordinary and grammatical meaning of the expression "any loss of support suffered" appearing in s. 7(3), must refer to the loss of support suffered by "the party for whom and for whose benefit the action is brought". In other words, the loss suffered must be personal to the class of dependents specified in s. 7(2) so that a loss suffered by any other person not falling within that class must be excluded.

Having regard to the mother's admission aforesaid, the loss of support suffered by her was RM375 p.m. only. For the Court to increase the value of the loss of support to RM750 p.m., by adding the sum that was spent by the mother on the three schoolgoing children, to the sum she had spent on herself, would amount to departing from the plain, ordinary, and grammatical meaning of the statutory language of s. 7(2).

The fact that the deceased had provided his mother with funds not only to maintain herself but also to enable her to carry out the duty imposed upon her by ss. 3 and 6 of the Guardianship of Infants Act 1961, on the demise of her husband, namely, being responsible for the support, health and education of the three schoolgoing children would, therefore, afford no grounds to justify the Court in expanding the class of persons specified under s. 7(2) as being entitled to make a claim for loss of support. The defendant tortfeasors can in no way be saddled with the obligations of the mother under s. 3 or 6 of the Guardianship of Infants Act 1961, simply because there is no legal basis for doing so.

Additionally, a claim to increase the value of the loss of support based upon the consideration of the obligations of the mother under s. 3 and 6 of the Guardianship of Infants Act 1961, would not have been reasonably foreseeable by the defendant tortfeasors and would, therefore, be bad for remoteness. (See *Overseas Tankship (U.K.) v. Morts Dock and Engineering Co. (The Wagon Mound* [1961] AC 388 (PC)).

I therefore concur in the view of the majority of the members of this Court on this point, namely, that having regard to the mother's admission, the value of the dependency in this case should be reduced from RM750 p.m. to RM375 p.m.

I now turn to consider a separate point of law advanced by Counsel for the defendants, before us.

It was submitted, contrary to what had been conceded by Counsel for the defendants in the Court below, that notwithstanding the provisions of proviso (d) to s. 7(3)(iv) of the Act, the Court still retains a **discretion**, to reduce the number of years of purchase, to a period less than 16 years, to provide for contingencies, such as the probability of the deceased marrying had he not died in the accident, in which event, the contribution made by the deceased to his mother, would have ceased or been considerably reduced.

The provisions of s. 7(3)(iv) and the proviso (d) thereto read as follows:

> 7(3) - The damages which the party who shall be liable under subsection (l) to pay to the party for whom and for whose benefit the action is brought shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for any loss of support suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default of the party liable under subsection (l)
>
> Provided that -
>
> (i) ...
> (ii) ...
> (iii) ...
> (iv) in assessing the **loss of earnings** in respect of any period after the death of a person where such earnings provide for or contribute to the damages under this section the Court shall:
>
> (a) ...
> (b) ...
> (c) ...
> (d) take into account that in the case of a person **who was of the age of thirty years and below at the time of his death, the number of years' purchase shall be 16;** and in the case of any other person who was of the age range extending between thirty one years and fifty four years at the time of his death, the number of years' purchase shall be calculated by using the figure 55, minus the age of the person at the time of death and dividing the remainder by the figure 2.
>
> (Emphasis provided)

I regret I have to part company with the majority of the members of this Court and say that I cannot accede to the submission of Counsel for the defendants regarding this part of the case as, to do so, would be to fly in the face of the mandatory provisions of proviso (d) to s. 7(3)(iv) of the Act, which fixes the multiplier at 16 years in cases such as the present.

To my mind, it is manifestly clear, that in enacting the detailed provisions of proviso (d) to s. 7(3)(iv), Parliament had intended to take away the discretion of the Court to select the appropriate multiplier, in assessing loss of earnings of a deceased person in respect of any period after his death, for purposes of a claim for loss of support under s. 7(1).

If Counsel for the defendants were correct in his contentions, regarding this part of the case, then the Court could also, in an appropriate case, in the exercise of its discretion:

(1) in the case of a deceased person of the age of 30 years and below, **increase** the multiplier beyond 16 years, or
(2) in the case of a deceased person of the age range extending between 31 years and 54 years, **ignore** the statutory formula provided and select an appropriate multiplier, or
(3) in the case of a deceased person of the age of 55 years and above, select an appropriate multiplier, when assessing loss of earnings in respect of the period after the death, although proviso (d) impliedly **debars** the Court altogether from making any such award.

In other words, the effect of Counsel for the defendants' submissions, if upheld, would mean that the Court could, in any of the above cases, **rewrite the statute,** or **brush aside explicit statutory provisions** and select, in the exercise of its **discretion,** a suitable multiplier. This proposition is, in my view, quite untenable, and has only to be stated to be rejected, bearing in mind that when a question of statutory interpretation arises, the duty of the Court is simply to give effect to the will of Parliament as expressed in the law. "The judicial function is that of interpretation; it does not include the power of amendment under the guise of interpretation". (See *West Coast Hotel Co. v. Parrish,* 300 U.S. 379 at 404 [1937] per Sutherland J.) Similarly, Cardozo J. said in *Sunprinting and Publishing Association v. Remington Paper and Power Co.* Inc. 130 NE 470, at 471 [1923]: "We are not at liberty to revise while professing to construe".

I recognise that the application of a fixed multiplier of 16 years in the present case, may be somewhat hard on the defendant tortfeasors. However, where the enactment of the legislature in clear and unequivocal language is capable of only one meaning; it must be enforced however harsh the result may be. (See *Cartledge v. E. Jopling & Sons Ltd* [1963] AC 758). Nor, for that matter, may the interpretation of a statute be approached by the Court taking into consideration notions as to what is just and expedient. (*Gwynne Buruell* [1840] 7 C1. J.F.572 per Goleridge J.). As Viscount Birkenhead LC put it in *Sutters v. Briggs* [1922] l AC 1 at p. 8:

> The consequences of this view will no doubt be extremely inconvenient to many persons. But this is not a matter proper to influence the House unless in a doubtful case affording foothold for balanced speculations as to the probable intention of the legislature. Where, as here, the legal issues are not open to serious doubt our duty is to express a decision and leave the remedy (if one be resolved upon) to others.

Similarly, in *Stock v. Frank Jones (Tipton) Ltd.* [1978] 1 WLR 231, at 238, Lord Edmund-Davies said:

> ... dislike of the effect of a statute has never been an accepted reason for departing from its plain language. Holt CJ said nearly three centuries ago '... an Act of Parliament can do no wrong, though it may do several things that look pretty odd'- : (*City of London v. Wood*, [1701] 12 Mod. Rep. 669,687-688)... Accordingly, even if one regarded the policy implicit in (the Act concerned) as open to criticism, (if) the statutory language is clear beyond doubt, (it) must prevail.

So, also, in *Mohamed Noor bin Othman & Ors. v. Haji Mohamed Ismail* [1988] 3 MLJ 82, at 84, Hashim Yeop Sani SCJ (as he then was) speaking for the Supreme Court said:

> It is trite law that where the words of the statute are clear there is no room for the Court to go beyond the expressed language of a statute.

And, in *Magor and St. Mellons Rural District Council v. Newport Corporation* [1952] AC 189, the House of Lords held that in the construction of a statute the duty of the Court is limited to interpreting the words used by the legislature and it has no power to fill in any gaps disclosed, and that to do so would be to usurp the function of the legislature.

I therefore agree with the trial Judge that contingencies such as the probability of the deceased marrying had he not died in the accident and, as a result, his contributions for the support of his mother ceasing or being considerably reduced, "have been built into the statutory formula of 16 years", and that therefore he was bound to adopt that statutory formula since the deceased was 25 years of age at the time of his death.

It follows, that in my view, we are not at liberty to reduce the number of years' purchase from 16 years to 7 years or at all. For the same reason, I do not consider that the Court has a discretion to make any deduction from the number of years' purchase, the period for which the Court might have awarded pre-trial loss of support up to the date of trial. To this extent, I would, with respect, disagree with the view of the majority of the members of this Court expressed in their judgment in draft which I have had the advantage of reading.

For the sake of completeness, I must add that before us, an attempt was made by Counsel for the defendants to get round the difficulty posed by proviso (d) to s. 7(3)(iv) of the Act, by contending for a reduction in the award for loss of support on the ground that the Court still retained a discretion to reduce the **multiplicand** as opposed to the multipler, to take into account the likelihood of the deceased marrying had he not died in the accident. This is really an attempt to avoid the strict terms of proviso (d) to s. 7(3)(iv) of the Act by a side door. If the Court has no discretion to alter the statutory multiplier of 16 years' purchase on this account, for the reasons stated, then equally, it cannot do so indirectly, by reducing the multiplicand. I would therefore reject this branch of Counsel for the defendants' submissions'.

In the result, I would allow this appeal in part, to the extent only, that the judgment of the Court below should be varied to reflect my conclusions as aforesaid on the issues arising for decision. I would also make no order as to costs, here, since both sides have succeeded and yet have failed.